



Practitioner's Docket No. NAI1P086/00.058.01

#18
06/30/04

120

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Peter J. Churchyard et al.

Application No.: 09/650,729

Group No.: 2141

Filed: August 30, 2000

Examiner: Nguyen, Quang

For: METHOD AND SYSTEM FOR MAINTAINING A COMMUNICATIONS PROTOCOL
SESSION

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TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on June 17, 2004.
2. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

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* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

other than a small entity \$330.00

Appeal Brief fee due \$330.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$330.00
Extension fee (if any) \$0.00

TOTAL FEE DUE \$330.00

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6. FEE PAYMENT

Attached is a check in the amount of \$330.00.

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. NAI1P086).

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#18
06/30/04



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of)

Peter J. Churchyard et al.)

Application No. 09/650,729)

Filed: August 30, 2000)

For: METHOD AND SYSTEM FOR)
MAINTAINING A COMMUNICATIONS)
PROTOCOL SESSION)

) Ex.: Nguyen, Quang

) Art Unit: 2141

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ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF (37 C.F.R. § 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on June 17, 2004.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 C.F.R. § 1.192(a))

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 1.192(c)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF INVENTION
- VI ISSUES
- VII GROUPING OF CLAIMS
- VIII ARGUMENTS

APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

The final page of this brief bears the practitioner's signature.

I REAL PARTY IN INTEREST (37 C.F.R. § 1.192(c)(1))

The real party in interest in this appeal is Networks Associates Technology, Inc.

II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 1.192(c)(2))

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no other such appeals or interferences.

III STATUS OF CLAIMS (37 C.F.R. § 1.192(c)(3))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-16.

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims withdrawn from consideration but not canceled: None
2. Claims pending: 1-16
3. Claims allowed: None
4. Claims rejected: 1-16

C. CLAIMS ON APPEAL

The claims on appeal are: 1-16

IV STATUS OF AMENDMENTS (37 C.F.R. § 1.192(c)(4))

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

V SUMMARY OF INVENTION (37 C.F.R. § 1.192(c)(5))

A method and system is disclosed for maintaining a communications protocol session between a client and server during times of inactivity at the client caused by other processing in the data path following a request by the client. See Figure 5, and the accompanying description. For various client processes that may expire after a specified amount of inactivity during a particular session, an agent of the client in the data path can send a response containing illusory content (see Figure 4 and the accompanying description) to the client that causes the client to maintain the current session. The process at the client can ignore this illusory content response but, by processing it, the communications path session between the client and server can be maintained. See Figure 5, and the accompanying description.

VI ISSUES (37 C.F.R. § 1.192(c)(6))

Issue # 1: The Examiner has rejected Claims 1-2 and 13-16 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889).

Issue # 2: The Examiner has rejected Claims 3-5 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Kloth (6,598,034).

Issue # 3: The Examiner has rejected Claims 6-8 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Ji et al. (5,623,600).

Issue # 4: The Examiner has rejected Claims 9-10 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Hair (6,615,349).

Issue # 5: The Examiner has rejected Claims 11-12 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Takaragi (6,341,349).

VII GROUPING OF CLAIMS (37 C.F.R. § 1.192(c)(7))

The claims of the following groups do not stand or fall together. Following is the grouping of claims. In the following section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1: Grouping of Claims

Group #1: Claims 1-2, 13, and 15-16

Group #2: Claim 14

Issue # 2: Grouping of Claims

Group #1: Claims 3-5

Issue # 3: Grouping of Claims

Group #1: Claims 6-7

Group #2: Claim 8

Issue # 4: Grouping of Claims

Group #1: Claims 9-10

Issue # 5: Grouping of Claims

Group #1: Claims 11-12

VIII ARGUMENTS (37 C.F.R. § 1.192(c)(8))

Issue #1:

The Examiner has rejected Claims 1-2 and 13-16 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889).

Group #1: Claims 1-2, 13, and 15-16

In the latest action, the Examiner has presented a response to appellant's arguments. Appellant notes, however, that the Examiner has primarily addressed only the subject matter added by amendment in appellant's previous response filed February 13, 2004. Moreover, it appears that the Examiner has, at least in part, overlooked appellant's other arguments regarding the original claimed subject matter. In order to ensure that all of appellant's arguments are considered under appeal, appellant has organized, under separate headings, the rebuttal to the Examiner's response to most recent arguments, and appellant's previous arguments.

Rebuttal to the Examiner's Response to Most Recent Arguments

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

For the reasons below, appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all the claim limitations.

In the previous action, the Examiner has primarily addressed only the subject matter added by amendment in appellant's previous response filed February 13, 2004, namely appellant's claimed

“wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.” Note all independent claims.

In the Examiner’s “Response to Arguments,” the Examiner relies, at least in part, on appellant’s admitted prior art (AAPA) on page 2, lines 13-19 to meet appellant’s claimed “wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing” (emphasis added). Such AAPA, however, is not a “teaching,” as purported by the Examiner, but rather a statement of the problem solved by appellant.

Moreover, it is noted that such statement of the problem was set forth in a section entitled “Description of the Related Art,” not “Appellant’s Admitted Prior Art,” as purported by the Examiner. The Examiner’s use of appellant’s recognition of the problem to be solved is not admitted prior art.

Thus, the Examiner’s use of appellant’s recognition of the “problem to be solved” in the rejection is improper, since it constitutes appellant’s own disclosure. See excerpt from MPEP below:

“To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art” when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of appellant’s disclosure must be put aside in reaching this determination...” (emphasis added – MPEP 2142)

Again, only appellant teaches and claims sending one or more messages containing illusory content “for preventing a time out operation as a result of security processing.” Thus, at least the third element of the *prima facie* case of obviousness has not been met, since the Examiner has

relied upon subject matter that is not prior art; and the prior art, when combined, fails to teach or suggest all the claim limitations.

After careful review of the remaining action under final, it appears that the Examiner has adjusted his previous action so that, instead of relying on the alleged AAPA to make a prior art showing of appellant's claimed "sending one or more messages containing illusory content from said agent to said client," the Examiner now relies on the following excerpt from Feldman to make such prior art showing.

"`VC KeepAlive`:

This message is sent by an ISR to inform its neighbors of its continued existence. It is the first message that is transmitted after initialization. In order to prevent the neighbor timeout period from expiring, the `VC KeepAlive` messages must be periodically sent to neighbors. The `VC KeepAlive` need only to be sent when no other protocol messages have been transmitted within the periodic interval time." (col. 7, lines 25-31)

The foregoing excerpt along with the remaining Feldman reference, however, fails to make any disclosure, teaching or even suggestion of any sort of "agent" and "client," let alone "sending one or more messages containing illusory content from said agent to said client" (emphasis added), as specifically claimed by appellant.

It appears that the Examiner is attempting to meet appellant's claimed "agent" by pointing to the Integrated Switch Router (ISR) of Feldman, which is defined to include a "standard IP router." Further, it appears that the Examiner is attempting to meet appellant's claimed "client" by pointing to the "neighbors" of Feldman, which are also ISR's.

In response, appellant points to the broadest plain and ordinary meaning of "agent," which is exemplified by the illustrative definition below:

"Agent - A program that performs some information gathering or processing task in the background. Typically, an agent is given a very small and well-defined task."

<http://www.webopedia.com/TERM/a/agent.html>

Moreover, appellant's specification provides a "proxy" as an example of an agent.

Appellant asserts that the standard IP router of Feldman does not meet appellant's claimed "agent," since it in no way constitutes any sort of *program* that performs some processing task in the *background*.

Further, appellant points to the broadest plain and ordinary meaning of "client," which is exemplified by the illustrative definition below:

"Client - The client part of a client-server architecture. Typically, a client is an application that runs on a personal computer or workstation and relies on a server to perform some operations. For example, an e-mail client is an application that enables you to send and receive e-mail." <http://www.webopedia.com/TERM/c/client.html>

Appellant asserts that the standard IP router of Feldman does not meet appellant's claimed "client," since it in no way constitutes an application that runs on a workstation or computer for relying on a server to perform operations.

Only appellant teaches and claims sending one or more messages containing illusory content from said agent to said client for the specific purpose of preventing the client from timing out as a result of security processing.

Still yet, it is noted that the VC KeepAlive message further does not contain any “illusory content,” as claimed by appellant. As set forth on page 9, first paragraph of the originally filed specification, the use of illusory content creates very little impact on the processing within the entities that do not recognize it.

Again, at least the third element of the *prima facie* case of obviousness has not been met, since the Examiner has relied upon subject matter that is not prior art; and the prior art, when combined, fails to teach or suggest all the claim limitations.

Appellant’s Previous Unconsidered Arguments

It appears that the Examiner continues to rely on above excerpt from Feldman to make a prior art showing of appellant claimed “determining if illusory content needs to be sent prior to sending said response.” See all independent claims.

Such excerpt, however, fails to disclose, teach and/or suggest appellant’s claimed “determining if illusory content needs to be sent prior to sending said response” (emphasis added). As mentioned earlier, such response is received in response to a request. In sharp contrast, the VC KeepAlive message of Feldman is “only to be sent when no other protocol messages have been transmitted within the periodic interval time,” and is sent “after initialization.” This simply does not meet “prior to sending said response,” as defined in the claims.

Yet again, at least the third element of the *prima facie* case of obviousness has not been met.

Group #2: Claim 14

With respect to Claim 14, the Examiner relies on “<http://www.faqs.org/rfc2616.html>” to make a prior art showing of appellant claimed “wherein said step of sending one or more messages containing illusory content further comprises the steps of: creating a copy of said response; modifying said copy of said response by inserting an entity-header; and transmitting said modified response said client.”

Such RFC2616 specification, however, fails to make any mention of appellant's claimed "wherein said step of sending one or more messages containing illusory content further comprises the steps of: creating a copy of said response; modifying said copy of said response by inserting an entity-header; and transmitting said modified response to said client" (emphasis added).

Only appellant teaches such copy creation and modifying the copy, in the manner claimed, for transmitting a modified response to the client.

Issue # 2

The Examiner has rejected Claims 3-5 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Kloth (6,598,034).

Group #1: Claims 3-5

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify AAPA in view of Feldman per the teachings of Kloth. Appellant respectfully disagrees with this proposition regarding the present group of claims, especially in view of the vast evidence to the contrary.

For example, Kloth relates to rule-based IP packet processing, while AAPA relates to session maintenance. To simply glean features from rule-based IP packet processing, such as that of Kloth, and combine the same with the *non-analogous art* of session maintenance, such as that of AAPA, would simply be improper. Rule-based IP packet processing route packets based on predetermined rules, while session maintenance prevents timeouts, etc.

"In order to rely on a reference as a basis for rejection of an appellant's invention, the reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) In view of the vastly different types of problems rule-based IP packet processing addresses as opposed to session maintenance, the Examiner's proposed combination is inappropriate.

Issue # 3

The Examiner has rejected Claims 6-8 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Ji et al. (5,623,600).

Group #1: Claims 6-7

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify AAPA in view of Feldman per the teachings of Ji. Appellant respectfully disagrees with this proposition.

Group #2: Claim 8

The Examiner relies on col. 2, lines 1-5 of Ji to make a prior art showing of appellant's claimed "wherein said step of searching a file further comprises scanning said file for one or more text phrases." Such excerpt along with the remaining Ji reference, however, makes absolutely no mention or suggestion of any sort of "searching a file [which] further comprises scanning said file for one or more text phrases" (emphasis added).

Thus, at least the third element of the *prima facie* case of obviousness has not been met.

Issue # 4

The Examiner has rejected Claims 9-10 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Hair (6,615,349).

Group #1: Claims 9-10

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify AAPA in view of Feldman per the teachings of Hair. Appellant respectfully disagrees with this proposition regarding the present group of claims, especially in view of the vast evidence to the contrary.

For example, Hair relates to encryption/decryption, while AAPA relates to session maintenance. To simply glean features from encryption/decryption, such as that of Hair, and combine the same with the *non-analogous art* of session maintenance, such as that of AAPA, would simply be improper. Encryption/decryption deals with secure transmissions, etc., while session maintenance prevents timeouts, etc. during protocol communications.

"In order to rely on a reference as a basis for rejection of an appellant's invention, the reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) In view of the vastly different types of problems encryption/decryption addresses as opposed to session maintenance, the Examiner's proposed combination is inappropriate.

Issue # 5

The Examiner has rejected Claims 11-12 under 35 U.S.C. §103(a) as allegedly being unpatentable over appellant's admitted prior art (AAPA) in view of Feldman et al. (6,130,889), and further in view of Takaragi (6,341,349).

Group #1: Claims 11-12

With respect to the first element of the *prima facie* case of obviousness, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify AAPA in view of Feldman per the teachings of Takaragi. Appellant respectfully disagrees with this proposition regarding the present group of claims, especially in view of the vast evidence to the contrary.

For example, Takaragi relates to encryption/decryption, while AAPA relates to session maintenance. To simply glean features from encryption/decryption, such as that of Takaragi, and combine the same with the *non-analogous art* of session maintenance, such as that of AAPA, would simply be improper. Encryption/decryption deals with secure transmissions, etc., while session maintenance prevents timeouts, etc. during protocol communications.

"In order to rely on a reference as a basis for rejection of an appellant's invention, the reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) In view of the vastly different types of problems encryption/decryption addresses as opposed to session maintenance, the Examiner's proposed combination is inappropriate.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

IX APPENDIX OF CLAIMS (37 C.F.R. § 1.192(c)(9))

The text of the claims involved in the appeal is:

1. (Previously Amended) A method of maintaining a data communications protocol session, the method comprising the steps of:
 - sending a request from a client to a server over a data communications network;
 - receiving said request in said server;
 - sending a response to said request from said server to said client over said data communications network;
 - receiving said response in an agent;
 - determining if illusory content needs to be sent prior to sending said response;
 - performing processing in said agent as a result of said response;
 - if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client;
 - sending said response from said agent to said client; and
 - receiving said response in said client;
 - wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

2. (Previously Amended) A method for an agent to maintain a data communications protocol session, the method comprising:
 - receiving a response in an agent from a server in a communications network, in response to a request from a client;
 - determining if illusory content needs to be sent prior to sending said response;
 - performing processing in said agent as a result of said response;
 - if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client; and
 - sending said response from said agent to said client;
 - wherein said one or more messages containing said illusory content is sent for preventing

a time out operation as a result of security processing.

3. (Original) A method as in claim 2, wherein said step of receiving a response further comprises receiving a file.

4. (Original) A method as in claim 3, wherein said file further comprises a computer program.

5. (Original) A method as in claim 3, wherein said file further comprises a document.

6. (Original) A method as in claim 2, wherein said step of performing processing further comprises searching a file.

7. (Original) A method as in claim 6, wherein said step of searching a file further comprises scanning said file for one or more computer viruses.

8. (Original) A method as in claim 6, wherein said step of searching a file further comprises scanning said file for one or more text phrases.

9. (Original) A method as in claim 2, wherein said step of performing processing further comprises encrypting a file.

10. (Original) A method as in claim 2, wherein said step of performing processing further comprises decrypting a file.

11. (Original) A method as in claim 2, wherein said step of performing processing further comprises creating a public key digital signature.

12. (Original) A method as in claim 2, wherein said step of performing processing further comprises verifying a public key digital signature.

13. (Original) A method as in claim 2, wherein said data communications protocol session further comprises an HTML session.

14. (Previously Amended) A method as in claim 13, wherein said step of sending one or more messages containing illusory content further comprises the steps of:

- creating a copy of said response;
- modifying said copy of said response by inserting an entity-header; and
- transmitting said modified response to said client.

15. (Previously Amended) A computer readable medium containing computer program instructions for maintaining a data communications protocol session, said computer program instructions containing instructions for:

- receiving a response from a server in a communications network, in response to a request from a client;

- determining if illusory content needs to be sent prior to sending said response;

- performing processing as a result of said response;

- if illusory content needs to be sent during said processing, sending one or more messages containing said illusory content appropriate for said data communications protocol to said client; and

- sending said response to said client;

- wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

16. (Previously Amended) A system for maintaining a data communications protocol session, comprising:

- a first computer operably coupled to one or more additional computers over said communications network, said first computer including software executable on said first computer and configured to:

- receive a response from a server in a communications network, in response to a request from a client;

- determine if illusory content needs to be sent prior to sending said response;

perform processing as a result of said response;
send one or more messages containing said illusory content appropriate for said data communications protocol to said client, if illusory content needs to be sent during said processing; and
send said response to said client;
wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P086/00.058.01).

Respectfully submitted,

By: _____

Kevin J. Zilka

Reg. No. 41,429

Date: _____

2/18/67

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